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No. 00-

IN THE
# Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
*Petitioner,*

v.

STEVE GARVEY,
*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

LAURENCE GOLD
BREDHOFF & KAISER
805 15th Street, N.W.
Suite 1000
Washington, D.C. 20005

TEL (202) 842-2600
FAX (202) 842-1888

CARTER G. PHILLIPS
VIRGINIA A. SEITZ*
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006

TEL (202) 736-8000
FAX (202) 736-8711

*Counsel for Petitioner*

* Counsel of Record

January 26, 2001

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

$5 PP

## QUESTION PRESENTED

Whether, in violation of the uniform holdings of this Court from *The Steelworkers Trilogy* to *United Paperworkers International Union* v. *Misco*, 484 U.S. 29 (1987), to *Eastern Associated Coal Corp.* v. *United Mine Workers of America, District 17*, 121 S. Ct. 462 (2000), the Ninth Circuit improperly rejected a labor arbitrator's fact finding based on credibility determinations in an award pursuant to a collective bargaining agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, and then compounded that error by arrogating to itself the role of arbitrator and deciding the merits of a claim that the parties had expressly committed to arbitration.

## PARTIES TO THE PROCEEDING

The only parties in the proceeding are the petitioner and respondent listed in the caption. The only other party in the proceeding below was Thomas T. Roberts, but he has been dismissed as a defendant.

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

Petitioner, the Major League Baseball Players Association, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

## OPINIONS BELOW

The two opinions of the court of appeals at issue were entered on February 10, 2000, and December 7, 2000, respectively. App. 1a-4a, 8a-36a. The first is reported at 203 F.3d 580 (9th Cir. 2000), and the second is not reported. The two orders of the United States District Court for the Central District of California were entered on Nov. 24, 1997 and May 17, 2000, respectively, and are not reported. App. 5a-7a, 37a. The two arbitration awards were issued on May 1, 1997 and July 16, 1999, respectively, and are not reported. App. 40a-45a, 46a-51a.

## JURISDICTION

The opinion and final judgment of the court of appeals were entered on December 5, 2000. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## STATUTORY PROVISION INVOLVED

This case arises under section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), which provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

## STATEMENT OF THE CASE

1. *Background.* In 1986, 1987, and 1988, the Major League Baseball Players Association ("MLBPA") filed a set of "collusion" grievances against the Major League Baseball Clubs ("Clubs"). The grievances alleged that the Clubs had violated the industry's collective bargaining agreement by engaging in collusion in the market for free agent services after the 1985, 1986, and 1987 baseball seasons.[1] App. 9a. According to the grievance, rather than competing with each other, the Clubs had acted in concert to decrease free agent salaries and, by doing so, substantially depressed salaries for large numbers of Players over an extended time period.

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[1] A free agent is a Player who may offer his services on the market to all Clubs, rather than a Player whose right to contract is restricted to a particular Club.

On December 21, 1990, after extensive arbitral proceedings, including awards finding that the Clubs had three times violated the collective bargaining agreement and caused extensive damage to numerous Players, the MLBPA and the Clubs entered into a global Settlement Agreement to resolve the grievances on behalf of all affected Players. App. 9a. Pursuant to this Agreement, the Clubs, *inter alia,* established a fund of $280 million to be distributed (with interest accumulating as of January 1, 1991) to all Major League Players damaged by the Clubs' collusion in the market for free agent services. *Id.*

Under the Settlement Agreement, the MLBPA, as the representative of all Players damaged by collusion, was assigned the task of designing a Framework "to establish an appropriate process for evaluation and determination of individual claims" for money from the Fund. *Id.* at 10a (Settlement Agreement ¶ 17).[2] Pursuant to that Framework, the MLBPA recommends to an Arbitrator how the Settlement Fund should be distributed among the numerous Players claiming that they were damaged by the Clubs' collusion. Individual Players have a right to object to any proposed distribution of the Fund. An Arbitrator resolves individual Players' objections to a proposed distribution in the context of the damage suffered by all members of the group; independently reviews the proposed distribution; and issues a final award. *Id.* at 10a-11a. As provided for in the Settlement Agreement and the Framework, the Custodian of the Settlement Fund may make distributions from the Settlement Fund only pursuant to a Distribution Plan that has been approved by the Arbitration Panel. See *id.* at 11a. (Settlement Agreement ¶ 9(a)).

---

[2] Pursuant to the Settlement Agreement, Players had an opportunity to file objections to the MLBPA's proposed Framework. Respondent Steve Garvey did not file an objection. On September 14, 1991, after hearing the objections of Players, an independent Arbitration Panel, with amendment, approved the proposed Framework. App. 10a.

Pursuant to Section II of the Framework, Major League Players who believed that they had a claim for damages resulting from the Clubs' collusion were entitled to file such claims by filling out a Claims Questionnaire by May 20, 1991. While the Settlement Fund was $280 million, "approximately 840 Players filed several thousand separate claims asserting more than $1.2 billion in lost salary damages and an additional $100 million in non-salary damages." See Weiner Decl. ¶ 7 (Docket No. 10).

The MLBPA then began the process of evaluating Players' claims for damages from the $280 million fund. As the MLBPA concluded the evaluation of claims arising from a particular season or seasons, it issued a recommended partial distribution plan for damages for all affected Players for that period. Each recommended plan was submitted to the Arbitrator. Affected Player claimants then filed with the Arbitrator objections to the MLBPA's recommendations. In response, the MLBPA was required to file statements explaining how it arrived at its recommendations. The Arbitrator then held hearings, and conducted his own "independent review" of the Distribution Plan to determine whether "the approved Framework and the criteria set forth therein have been properly applied in the proposed Distribution Plan." App. 10a-11a. Ultimately, the Arbitrator issued a final and binding award. *Id.* at 11a.

2. *Steve Garvey's Claim and the Arbitration Awards.* After the 1985 Major League baseball season, there were two years – 1986 and 1987 – remaining on respondent Steve Garvey's contract with the San Diego Padres. App. 14a. Garvey filed a claim for damages from the Settlement Fund based upon the theory that, after the 1985 baseball season, his contract was not extended past 1986 and 1987 to cover 1988 and 1989 due to the Clubs' collusion.

The MLBPA did not accept Garvey's lost contract extension claim in its recommended Partial Distribution Plan concerning Lost Salary Claims for the 1988 season. The

MLBPA explained that "Garvey did not present [it] with any evidence that the Padres actually offered to extend his contract," as was required to obtain damages for a lost contract extension under the Framework. App. 14a.

At the July 2, 1996 hearing before the Arbitrator on his objection, Garvey for the first time presented evidence that the Padres had offered him a contract extension in 1985. App. 14a. Garvey claimed that in 1985, he was offered an extension of his contract with the Padres to include the 1988 and 1989 seasons; that the Padres withdrew the offer as a result of collusion; and therefore that he was entitled to damages for the loss of the salary that he should have earned under the contract extension. *Id.* He so testified and presented a June 28, 1996 letter from Ballard Smith, a Padre official in 1985, so stating. At that hearing, Garvey's representative stated that the objection should be sustained:

> [n]ot because we feel that the Players Association did anything wrong in their evaluation of his claims questionnaire or in evaluation of the evidence it had before them, but because there will be additional evidence which would have changed that determination and evaluation and, we believe, would have justified the awarding of Mr. Garvey's lost extension claim damages for 1988. [See July 2, 1996 Transcript at 6.]

After an agreed pause, the MLBPA provided a supplemental submission to the Arbitrator, describing all of the evidence related to Garvey's claim, including evidence that supported it and evidence that was inconsistent with it. See App. 15a-16a (describing Weiner Decl., Exhibits B & C).

The MLBPA submitted Garvey's 1988 and 1991 responses to collusion questionnaires where Garvey described his 1985 negotiations with the Padres and stated that it "'would have been reasonable' for the Padres to pursue an extension" but never mentioned that he had received an extension offer; Ballard Smith's 1986 testimony indicating that the Padres

would not have signed Garvey at that time; a letter from Garvey's agent indicating that Garvey was handling the 1985 negotiations, but that he, the agent, was unaware of any extension offer made to Garvey in 1985; and notes of a 1996 interview with Smith in which Smith stated that he had offered Garvey an extension. *Id.*

In an award entered on May 1, 1997, the Arbitrator approved with modifications the partial distribution plan for Players who lost salary as a result of collusion during the 1988 baseball season. The plan addressed 464 claims seeking damages in excess of $200 million. May 1, 1997 Award at 2-3. In so doing, the Arbitrator sustained several Players' objections, but rejected others, including Garvey's. App. 16a.

In rejecting Garvey's objection and finding that Garvey had not lost a contract extension as a result of the Clubs' collusion, the Arbitrator first explained the standard for review of lost contract extension claims – to wit, that such claims are valid only where "a specific offer of an extension was made by a club prior to collusion only to thereafter be withdrawn when the collusion scheme was initiated." App. 48a.

Then the Arbitrator detailed both Garvey's testimony and Ballard Smith's letter about the alleged 1985 contract extension offer from the Padres. *Id.* at 48a-49a. The Arbitrator stated that he had "substantial doubt as to the credibility of the statements in the Smith letter":

> On November 6, 1986 and again on November 20, 1986, Smith testified under oath in the Collusion I proceeding as follows:
>
> "Q. If Steve Garvey came around today [November of 1986] as the same player you signed after the '82 season . . . Do I take it correctly you don't think it would make sense to offer him more than a three-year contract?
>
> A. Based on where we are today?
>
> Q. Yes.

A. We wouldn't sign him today.

Q. Even if he's the same player that came out in '82.

A. Certainly not.

Q. Why not?

A. Our Club is at a different point. We were looking for credibility in the community. He was a very unique individual, plus the fact we won't need Steve today. We're stuck with a couple of younger players we'd like to play at first base. [*Id.* at 50a.]

The Arbitrator next pointed out that Smith had also testified in November of 1986 that the Club owners had not been engaged in collusion in the market for free agents. He then concluded:

> *In light of the stark contradictions between the contents of the recently produced letter from Smith and his earlier sworn statement that the Padres were not interested in re-signing Garvey,* I must reject his more recent assertion that Garvey did not receive an extension to his contract covering the 1988 and 1989 seasons because the Padres were forced by the other owners to participate in the collusion scheme. [App. 51a (emphasis supplied).]

In sum, the Arbitrator rejected the Ballard Smith letter for two reasons. First, the letter contradicted past testimony from Ballard Smith on the specific topic. Second, the Arbitrator believed that Ballard Smith's evidence had been untrustworthy in the past, and he was generally unwilling to credit him.

Garvey filed a motion to vacate the award in federal district court. During the pendency of that action, the MLBPA issued a proposed Distribution Plan for Lost Salary Damages for the 1989 season. The Plan did not recommend damages for

Garvey for loss of 1989 salary. App. 40a. Garvey filed an objection to that Plan, too.

On July 16, 1999, the Arbitrator issued an award approving, with modifications, the Plan for the 1989 season. App. 40a-45a. Again the Arbitrator sustained several Players' objections, but rejected others including Garvey's:

> The credibility of the Garvey testimony and the written submissions of Smith are both subject to some question. For example, in the original statement of the Garvey claim, along with the accompanying collusion claims questionnaire, it is said that he spoke with Smith regarding a possible contract extension "toward the end of the 1986 season" . . . and that Smith demurred. No mention is made that an agreement to extend the existing contract was ever constructed. In his turn, Ballard Smith also has provided conflicting statements. On the one hand, he asserts that "During the 1985 season, it was my intent to sign Steve Garvey to a two year contract extension" and that before the end of the season he made such an offer to Garvey. In November of 1986, however, Smith testified under oath "We wouldn't sign him today". If Smith would opt for two younger players rather than Garvey on November 6, 1986, why would he contemporaneously agree to a contract extension covering 1988 and 1989?[3] [*Id.* at 43a-44a.]

Thus, the Arbitrator's award did not provide Garvey with damages for lost salary during the 1989 season.

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[3] The Arbitrator also observed that Garvey's agent, Jeremy Kapstein, had stated that, although he was unaware of the details of Garvey's discussions with Ballard Smith, he did become aware that the "dialogue . . . was stalled" and that Garvey never reported that the discussions resulted in oral agreement on a contract extension. App. 44a.

3. *Judicial Proceedings.*

a. *The First District Court Proceedings.* On November 3, 1997, Garvey filed an Amended Motion to Vacate the May 1, 1997 arbitration award denying him damages for a lost contract extension covering the 1988 season. App. 17a. Garvey specifically requested:

> 3. That the Court remand the May 1, 1997 Arbitration Award to the Arbitration Panel for a de novo arbitration hearing. [Amended Motion to Vacate at 22 (Nov. 3, 1997).]

The district court denied the motion to vacate. See Dec. 8, 1997 Order (App. 37a) (incorporating Oral Order at Hearing at 19) ("[the arbitrator] heard the case, and he made his decision, and I think he was correct") (*id.* at 39a)).

While that appeal was pending, the Arbitrator issued his July 16, 1999 award that, *inter alia*, denied Garvey lost salary damages for the 1989 season. App. 40a. On October 22, 1999, Garvey filed a Petition to Vacate the July 16, 1999 arbitration award. That action was stayed pending decision of the initial Motion to Vacate.

b. *The First Ninth Circuit Decision.* In a majority opinion authored by Judge Reinhardt, the Ninth Circuit reversed the district court's decision and held that the Arbitrator's May 1, 1997 award should be vacated. The Court first recognized that "arbitrators have no obligation to give their reasons for an award at all." App. 22a (internal quotation marks and omission in original omitted.) But, the court stated, "[w]hen an arbitrator does give reasons for a decision . . . we must accept those reasons as the basis for the award." *Id.* The court of appeals found that the Arbitrator did not credit the Ballard Smith letter supporting Garvey's claim and that the Arbitrator's stated reason for refusing to do so "borders on the irrational." *Id.* at 26a.

> The only inference that can fairly be drawn from the arbitrator's current crediting of Smith's earlier perjurious testimony is that the arbitrator was attempting to "dispense his own brand of industrial justice." *For this reason,* we decline to enforce the award. [*Id.* at 27a (emphasis supplied).]

The court therefore concluded:

> Based on the foregoing, the district court's denial of Garvey's Amended Motion to Vacate Arbitration Award is reversed. REVERSED and REMANDED with directions to vacate the award. [App. at 29a.]

Judge Whyte dissented, stating his belief that, in vacating the arbitration award, "the majority had "overstepped our deferential review role." App. at 33a. After laying out the established standard of review, he explained:

> It seems to me that the majority here quarrels with the arbitrator's fact finding rather than finding the award does not draw its essence from the collective bargaining agreement. In any event, the majority assumes that the arbitrator based its decision on Ballard Smith's testimony. However, the arbitrator stated that "[t]he shadow cast over the credibility of the Smith testimony *coupled with the absence of any other corroboration of the claim submitted by Garvey* compels a finding that the Padres declined to extend his contract not because of the collusion effect of the clubs. . . ." In other words, it appears the arbitrator felt that Smith's prior inconsistent testimony negated the credibility of his current testimony and, therefore, the probative value of it was outweighed by the conclusion that could be drawn from the lack of any corroboration that a specific extension offer had been made. [*Id.* at 34a (emphasis in original).]

Finally, the dissent pointed out that "Garvey's responses to claims questionnaires" submitted in 1988 and 1991 "contain no mention of a specific offer" and "never state that a specific

extension offer was actually made" even though they "discuss circumstances surrounding failed contract extension negotiations." App. 34a. In addition, "Garvey never told his agent that he had received a specific offer from the Padres." *Id.* at 35a. In light of the award and the record evidence, the dissent concluded that that award should have been enforced.

c. *The District Court's Order on Remand.* At an April 17, 2000 status conference before the district court concerning the spreading of the mandate of the court of appeals, the parties agreed that the court of appeals' decision required the district court to enter an order granting Garvey's Amended Motion to Vacate and vacating the May 1, 1997 award with respect to Garvey. In addition, the parties agreed that the court should vacate the July 16, 1999 award insofar as it related to Garvey, because it was issued, at least in part, for the same reason stated in the May 1, 1997 award.

Garvey further asserted, however, that the court of appeals had decided that Ballard Smith had to be credited and had found as a fact that the San Diego Padres had offered Garvey a two-year contract extension in 1985. He therefore argued that the district court must enter judgment on the merits of Garvey's claims. The MLBPA opposed the entry of such an order on the ground that the district court should not and could not enter an order requiring the Custodian of the Settlement Fund to pay Garvey damages for a lost contract extension covering 1988 and 1989. Instead, the MLBPA stated that the awards should be vacated, allowing Garvey's claims to be processed and decided under the Settlement Agreement and Framework. In addition, the MLBPA indicated that it would no longer oppose Garvey's outstanding request that the Arbitrator, Thomas T. Roberts, recuse himself from the remanded proceedings on Garvey's claims for lost salary during the 1988 and 1989 seasons.

On May 18, 2000, the district court entered an order vacating the arbitration awards at issue and remanding the matter for further de novo arbitration proceedings under the

Settlement Agreement and Framework. App. 5a. In addition, the court stated that "[t]he MLBPA does not object to Garvey's request that the arbitrator, Thomas Roberts, recuse himself from further proceedings with respect to Garvey's claim that he received an actual offer of contract extension covering the 1988 and 1989 seasons that was withdrawn as a result of collusion." *Id.* at 7a.

d. *The Second Court of Appeals Decision.* On June 19, 2000, Garvey appealed. The court of appeals granted Garvey's motion to expedite and, on December 5, 2000, issued its decision, again reversing the decision of the district court. App. 1a-3a. The court of appeals stated that, in its initial opinion, it had gone beyond a decision that the Arbitrator's stated reason for refusing to credit the Ballard Smith letter was irrational and vacating the arbitration award. Instead, the Ninth Circuit explained that it had decided the merits of the matter that had been submitted to arbitration: "[W]e established in *Garvey* that the conclusion that Smith made Garvey an offer and subsequently withdrew it because of the collusion scheme was the only conclusion that the arbitrator could draw from the record in the proceedings." *Id.* at 2a. On that basis, the court ordered the district court to *order the Arbitrator to issue an award finding that Garvey had lost a contract extension as a result of collusion and granting his claim for a multi-million dollar damages award.*

## REASONS FOR GRANTING THE PETITION

In this review-of-a-labor-arbitration decision, the Ninth Circuit staked a judicial claim to decide the arbitration on the merits – by making its own findings of fact in place of the labor arbitrator's findings resting on credibility determinations and then ordering the Arbitrator to sustain the contract claim the Arbitrator had rejected and to enter an award in the claimant's favor.

The Ninth Circuit's bid to substitute judicial decision-making for the parties' choice of arbitral decision-making is foreclosed by labor arbitration principles stated by this Court in *The Steelworkers Trilogy* and its progeny. Not surprisingly, and equally to the point, the decisions below are in conflict with the decisions of every other court of appeals to address the precise question presented here. Plainly stated, the Ninth Circuit's approach flies in the face of the federal policy mandating arbitral determination of issues committed by the bargaining parties to arbitration and its deviation from the approach of the other circuits undermines the national uniformity that is a central goal of federal labor arbitration law.

By appropriating the role of arbitrator to itself in this case, the Ninth Circuit subverted the bargaining parties' expressly stated intent that an arbitrator with substantial experience under – and a concomitant understanding of the nuances of – Major League Baseball's collective bargaining agreement decide and reconcile the collusion claims of all of the many Players who were injured by collusion and sought damages from a single, fixed collusion Settlement Fund established by the parties on the premise that such claims would be settled in arbitration. And, by so doing, the Ninth Circuit worked a profound – and profoundly detrimental – change in the judicial role in reviewing labor arbitration awards.

This Court has stated in the most emphatic terms that in reviewing challenges to a labor arbitration decision, a court may *not* overturn the decision "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority." *United Paperworkers Int'l Union* v. *Misco*, 484 U.S. 28, 38 (1987). Thus, the judicial role is limited to assuring against a single egregious form of arbitral error – a decision that the award does not "draw its essence from the collective bargaining agreement." *Id.* This Court has made it equally plain that on discerning such an error, the courts are *not* to take on the arbitral function by

rendering a judicial decision on the merits of the arbitration, but are to vacate the award and remand for further proceedings before the arbitrator. *Id.* at 40 n.10.

In contrast, on the Ninth Circuit approach here, a review proceeding becomes the occasion for judicial determination of the facts, for judicial application of the contract law to the facts, and for judicial awards to claimants. In each particular, that is antithetical to the genius of the labor arbitration system, to the bargaining parties' provision for arbitration, and to the national labor policy preference of private resolution of labor contract disputes.

On all these grounds, this Court's review is required to safeguard the labor arbitration system from the threat of improper judicial intervention posed by the Ninth Circuit's approach here and to restore uniformity to the federal labor arbitration law. The need for review is particularly strong since that threat is posed by the Ninth Circuit – the largest and busiest of the courts of appeals and a circuit with a heavy review-of-labor-arbitration case load. We would be derelict if we did not add that while all the foregoing considerations make the strongest case for a grant of certiorari, see *infra* at 14-19, there is one further consideration that points to a grant and to a summary disposition reversing and remanding: That consideration is that the Ninth Circuit's decisions here, when judged by the labor arbitration principles stated in this Court's cases, are plainly and unequivocally wrong, see *infra* at 19-20.

1. The Ninth Circuit decisions here are a compound of two cardinal errors. The court below first rejected the labor Arbitrator's findings of fact based on the Arbitrator's credibility determination and made its own judicial findings, and then built on and magnified that error by making a judicial determination of the arbitration's merits and ordering the Arbitrator to enter the court's determination as the Arbitrator's award, rather than remanding for further arbitral proceedings.

In light of this Court's teachings, it should have been inconceivable to the Ninth Circuit that it should substitute its analysis of the record evidence and its analysis of the credibility of critical evidence for a labor arbitrator's considered analysis of the same evidence. "[A]n arbitrator must find facts and a court may not reject those findings simply because it disagrees with them," and may not do so even if the court views the factfinding as "improvident, even silly." *Misco*, 484 U.S. at 38, 39. The Ninth Circuit did not simply transgress that basic limitation on its power here; that court ran roughshod over the limitation by, after indicating familiarity with the Arbitrator, refusing to accept his determination. See App. 26a ("given the arbitrator's professional experience, the decision can be explained only by his desire to dispense his own brand of industrial justice").

The critical issue in the arbitration here was whether the Padres actually offered Garvey a contract extension and then withdrew that specific offer as a result of the Clubs' collusion. And the critical evidence in that regard was the letter of Ballard Smith that stated that the Padres had done so. The Arbitrator, taking all the background facts into account (including the lack of contemporaneous documentation), refused to credit that letter. The Ninth Circuit not only rejected the Arbitrator's analysis of the evidence and his finding that there was not sufficient evidence that an offer had been made, but made its own analysis of the evidence and found that an offer had in fact been made.[4]

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[4] The Ninth Circuit's conclusion that the Arbitrator "dispense[d] his own brand of industrial justice" is an ineffectual rhetorical flourish. App. 27a. Judge Reinhardt's reference is plainly to this Court's statement in *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) that "an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice." That statement refers to arbitral failure to follow the contract in determining a claim and not to arbitral failure, or perceived arbitral failure, in analyzing the evidence and

All the circuits, other than the Ninth Circuit, recognize, in the words of the Third Circuit, that "an arbitrator's decision need be neither wise nor internally consistent" and that "findings of fact and inferences to be drawn therefrom are the exclusive province of the arbitrator." *Exxon Shipping Co.* v. *Exxon Seamen's Union*, 73 F.3d 1287, 1297 (3d Cir. 1996). See *Sullivan, Long & Hagerty, Inc.* v. *Local 559, Laborers' Int'l Union of N. Am.*, 980 F.2d 1424, 1429 (11th Cir. 1993) ("[a]lthough we might consider such evidence to be insufficient to establish discrimination by Sullivan, even 'improvident' or 'silly' factfinding is 'hardly a sufficient basis for disregarding what the agent appointed by the parties determined to be the historical facts'"); *Local No. 7 United Food and Commercial Workers Int'l Union* v. *King Soopers, Inc.*, 222 F.3d 1223, 1226 (10th Cir. 2000) ("'courts are not authorized to reconsider the merits of any award even though the parties may allege that the award rests on errors of fact'") (quoting *Misco*, 484 U.S. at 36); *Remmey* v. *PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir. 1994) (courts are not free to reject an arbitral award simply because "they would have reached a different conclusion if presented with the same facts"); *Eberhard Foods, Inc.* v. *Handy*, 868 F.2d 890, 891 (6th Cir. 1989) (observing that in *Misco* this Court "again advised lower federal courts to be more deferential to the arbitration process").

In sum, the Ninth Circuit's decision here is in conflict with *Misco* and the decisions of all other courts of appeals and could not be more wrong.

2. Having made the legal error of reversing the Arbitrator's fact finding, the Ninth Circuit leveraged that error into a judicial authority to determine the merits of the underlying claim and to order the Arbitrator who had rejected the

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finding arbitral facts. Therefore, nothing in *Enterprise Wheel* authorizes the kind of judicial fact finding and evaluation of evidence that the Ninth Circuit indulged in here.

contract claims at issue to enter an award in favor of the claimant. In this second respect, the decisions below, in allowing a disappointed grievant to retry and win in the federal courts a case lost in arbitration, are contrary to this Court's labor arbitration teachings and in conflict with the decisions of other courts of appeals.

Here, the court of appeals – which neither presided over the hearing nor observed any testimony – arrogated to itself the role of arbitrator, assessed the credibility of the witnesses, weighed the evidence, held that no alternative grounds supporting the award could exist, and that, on the evidence, the claimant was entitled to a multi-million dollar damages award:

> [W]e established in *Garvey* that the conclusion that Smith made Garvey an offer and subsequently withdrew it because of the collusion scheme was the only conclusion that the arbitrator could draw from the record in the proceedings. . . .
>
> Accordingly, we reverse the district court order [remanding for further arbitration proceedings] and direct the district court to remand the cases to the Arbitration Panel with instructions to enter an award in favor or Garvey. . . . [App. 2a, 3a.]

Again, the Ninth Circuit did not merely transgress, but rather ran roughshod over the limitations on its authority stated by this Court. This Court has expressly held that:

> as a rule the court [that has vacated an award] must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. *Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if*

> *they are permitted under the terms of the agreement.* [*Misco*, 484 U.S. at 41 n.10 (emphasis supplied).]

See also *United Steelworkers of Am.* v. *American Mfg. Co.*, 363 U.S. 564, 567-68 (1960) ("[t]he function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator"; "[t]he courts . . . have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim") (footnote omitted). Cf. *Eastern Associated Coal Corp.* v. *United Mine Workers of Am., Dist. 17*, 121 S. Ct. 462, 466-67 (2000) ("the 'proper' judicial approach to a labor arbitration award is to 'refus[e] . . . to review the merits'").

The circuit law outside the Ninth Circuit uniformly heeds this Court's admonitions. For example, in *John Morrell & Co.* v. *United Food & Commercial Workers International Union Local 304*, 992 F.2d 205, 206-07 (8th Cir. 1992), a court of appeals had held that a prior arbitration award had to be vacated, because the arbitrator had incorrectly addressed the legality of a strike in sustaining a grievance and because a judicial determination that the strike was unlawful had preclusive effect. The union then sought to return the matter to arbitration, on the ground that, even if the strike were unlawful, its grievances should nonetheless have been sustained. The company refused to arbitrate on the ground that the court of appeals' vacatur of the prior arbitration finally determined all issues in the case. The court of appeals held that its earlier vacatur of the award on one ground was no obstacle to the return of the matter to the arbitrator so that he could address alternative grounds supporting his award. The court explained that "courts should not foreclose further proceedings before an arbitrator even if the arbitrator's prior 'procedural aberrations rise to the level of affirmative misconduct' requiring a court to vacate an award." *Id.* at 207.

Similarly, in *Smith* v. *Union Carbide Corp.*, 350 F.2d 258 (6th Cir. 1965), the district court determined that the arbitrators had failed to comply with the required procedures in the contract governing the arbitration. The judge vacated the award and "proceeded to hear the case de novo," determining that a claimant was entitled to pension benefits. *Id.* at 260. The Sixth Circuit reversed. It held that "the district judge exceeded his authority when he undertook to decide plaintiff's claims on their merits." *Id.* at 261. It concluded that "the district judge should have remanded the case to the arbitrators for procedure in accordance with the terms of the contract." *Id.* See also *Brotherhood Ry. Carmen Div., Transp. Communications Int'l Union* v. *Atchison, Topeka & Santa Fe Ry.*, 956 F.2d 156, 160 (7th Cir. 1992) (remanding a matter to arbitration for a determination of what procedure should follow a judicial decision that an arbitration award is enforceable); *Foster* v. *Turley*, 808 F.2d 38, 43 (10th Cir. 1986) ("if the district court here determines on remand that the award must be vacated on the ground of fraud, the court may not then decide the merits of the controversy. The court may only consider whether, pursuant to section 10(e) of the [Arbitration] Act, a remand to the arbitrators for rehearing is appropriate").[5]

In adopting a new, expansive judicial role in reviewing labor arbitration decisions, the Ninth Circuit defied this Court, brought itself into conflict with other courts of appeals, and

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[5] *See also Harvey Aluminum, Inc.* v. *United Steelworkers of Am.*, 263 F. Supp. 488, 495 (C.D. Cal. 1967) (vacating arbitral award for wrongful exclusion of testimony of employer's witness and failure to give the employer proper warning of the evidentiary rules to be used in the hearing, and remanding the case to the arbitrator "for the taking of the testimony" of the witness "and such other evidence, if any, as the Arbitrator may deem appropriate in the circumstances, and the making of such Award as he deems proper after consideration of all the pertinent and material evidence").

disrupted the uniformity of federal arbitration law. Certiorari review is clearly warranted.

3. We believe that our showing thus far clearly demonstrates that the petition for review should be granted. At the risk of unduly prolonging the petition, however, we also believe that it is clear beyond peradventure that the Ninth Circuit has violated all fundamental precepts of labor arbitration law in the particular facts in this case. For this reason, we add a brief showing that summary reversal is warranted. See *Mireles* v. *Waco*, 502 U.S. 9, 15 (1991) (summary reversal is appropriate when "the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error") (Scalia, J., dissenting) (internal quotation marks omitted) (quoting R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* 281 (6th ed. 1986) (quoting *Scweiker* v. *Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting))).

"The reasons for insulating arbitral decisions from judicial review are grounded in the federal statutes regulating labor-management relations. These statutes reflect a decided preference for private settlement of labor disputes without the intervention of government." *Misco*, 484 U.S. at 37. Labor arbitration plays a central role in this private process, and the labor arbitrator is "the proctor of the bargain" entered into by the contracting parties. *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 53 (1974).

In furtherance of this national labor policy, this Court has, for more than four decades, held that "[t]he courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract" and that courts may not "ha[ve] the final say on the merits of the awards." *Misco*, 484 U.S. at 36 (citing *Enterprise Wheel & Car Corp.*, 363 U.S. at 596). The Ninth Circuit violated both of these principles in this case when it expanded the judicial role in labor arbitration to include decision on the merits of matters subject

to arbitral decision pursuant to a collectively bargained agreement.

In this instance, the collective bargaining parties agreed that the merits of Players' claims for damages from the Settlement Fund are to be decided by an arbitrator, not by a judge. See, *e.g.*, App. 10a-11a. Indeed, the parties specified that only arbitrators experienced in interpreting and applying baseball's collective bargaining agreement should decide the merits of all Players' claims for damages from the Settlement Fund. See Settlement Agreement ¶ 52 (providing that past Chairs of arbitration panels deciding grievances under baseball's collective bargaining agreement serve as the Arbitrator under the Framework if the current Arbitrator, another past Chair, is unable to serve). Further, because the parties established a fixed sum of money to pay the damages claims of hundreds of Players who alleged that they had been injured by the Clubs' violations of the collective bargaining agreement, the decision about how much money each Player receives thus must be made by an arbitrator with an understanding of the claims of all injured Players.

The intent of the parties simply cannot be fulfilled when federal judges, rather than an Arbitrator named under the Settlement Agreement, decide the merits of one Player's claim in a vacuum. Allowing a court to make the damages determination for Garvey undermines the rights of the hundreds of union members participating in the collectively-bargained Settlement and the process arising from it. Cf. *United Steelworkers of Am.* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960) ("[t]he ablest judge cannot be expected to bring the same experience and competence [possessed by the arbitrator] to bear upon the determination of a grievance, because he cannot be similarly informed [of the

'common law of the shop' and the 'specialized needs' of the parties]").[6]

There can be no doubt that the labor-arbitration-review principles elucidated by this Court in *The Steelworkers Trilogy* and its progeny apply with full force here. By substituting its analysis of the critical evidence, its factfinding, and its determination for those of the labor Arbitrator, the court of appeals has arrogated to itself a judicial authority that, under this Court's decisions and federal labor arbitration law, it does not possess. For these reasons, this Court may wish to consider granting the petition and summarily reversing the Ninth Circuit.

* * * *

This Court should grant the petition for certiorari to resolve the conflicts and restore uniformity and to enforce established federal labor arbitration law. Moreover, the Ninth Circuit's errors are so fundamental and egregious that this Court may

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[6] Even assuming (incorrectly) that the vacatur was lawful, had the court of appeals followed this Court's command and remanded the matter to arbitration, the Arbitrator would at that time have considered all evidence related to Garvey's claimed lost extension, both supportive evidence and inconsistent evidence. Specifically, the Arbitrator would have considered whether Ballard Smith's evidence should be credited or whether there was some different basis for refusing to credit his letter. The Arbitrator may have decided to conduct a further hearing or to request further documentation or he may not have done so. Ultimately, the Arbitrator would have decided whether or not to grant Garvey's claim. Indeed, in his Amended Motion to Vacate, Garvey did not request a judicial determination of his claim, but instead sought as relief that the Arbitrator's award be vacated with respect to his claim, and "[t]hat the Court remand the May 1, 1997 Arbitration Award to the Arbitration Panel for a *de novo* arbitration hearing." Amended Motion to Vacate at 22 (Nov. 3, 1997). That request reflects a correct understanding of the arbitration agreement between the parties and the established law governing judicial review of arbitration. The critical point is that the questions related to what future proceedings should take place and the merits of Garvey's claim are for the Arbitrator, not for a court.

wish to consider summary reversal of its decisions in this case.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAURENCE GOLD
BREDHOFF & KAISER
805 15th Street, N.W.
Suite 1000
Washington, D.C. 20005

TEL (202) 842-2600
FAX (202) 842-1888

CARTER G. PHILLIPS
VIRGINIA A. SEITZ*
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006

TEL (202) 736-8000
FAX (202) 786-8711

*Counsel for Petitioner*

* Counsel of Record

January 26, 2001